

Service

Department of the Treasury

DEN0257

31 Hopkins Plaza, Baltimore, MD 21201

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

MAY 26 1998

JUN 23 1998

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated under the [REDACTED] Not For Profit Corporation Act on [REDACTED]. You were organized for the general purposes described under section 501(c)(3) of the Internal Revenue Code, as well as for a greater number of specific purposes as stated in the organizing document.

The description of activities provided in your application form 1023 indicates your purpose as teaching basic job skills, teaching individuals how to fill out job application, how to present themselves for job interviews and to offer tutorial programs to help those who do not have a GED. For those having some basic skills, you state you will offer some jobs, but also offer them complete assistance in opening their own business through a "Business Incubator program".

You indicate that the program will assist in the construction of a business plan, help individuals obtain financing and offer support services such as tax planning, accounting, further professional training and a network of people that can assist them beyond your services.

You further indicate that you "will also offer safe, decent and affordable housing to those of low and moderate income. The three phases will help to create jobs and assist in self-sufficiency for those in transition from Welfare".

You contend this will lessen the burden of the government and thus, the taxpayers. You believe the participants themselves, will become "taxpayers".

Our letter dated [REDACTED] requested that you provide specific detail regarding past, present and planned activities of your organization. This was pursuant, to information contained in the application as well as the purposes identified in your articles of incorporation (i.e. providing Child Care, Homes for the Elderly or Handicapped and operating a School). You responded by indicating that "At the present time, we have no intentions of implementing operations.

[REDACTED]

The reason these activities are listed in our Articles of Incorporation is to keep future costs of having to amend those articles. Every time that we have to amend the articles, we have to pay the preparer, as well as the [REDACTED]. You state the activities may be implemented at a later date, however, for now you were limiting your operations to those listed in the Form 1023, Application for Exemption.

In this regard, you provided some information concerning your proposed plans to operate a "Business Incubator Program" and the provision of affordable housing. We asked that you describe any rates and as involved and the time frames the organization had established to meet stated goals and objectives.

You indicated the "Business Incubator Program" was designed to draw off of the experiences of successful business leaders to assist others who would like to open a business of their own. You would provide guidance in the development of critically needed business plans, assist those persons in their application for obtaining financing, and guidance in establishing contracts for obtaining goods, and/or services necessary for the operation of those businesses.

You stated that currently, you would not be able to provide loans for businesses however, if you were to obtain the funding, would provide such loans. You stated that interest rates would be below market and that any fees would be based upon a person's ability to pay (a sliding scale) but not as yet determined.

The information which you provided concerning the provision of affordable housing indicates, that in the beginning of the program, a referral system would be used to steer persons to existing affordable housing. If funding is obtained, you will provide assistance to have the housing weatherized, safe and decent. If further funding is obtained, you may enter the construction aspect. You feel this portion of the program would not only provide affordable housing but also provide jobs and on the job training to persons entering the job market from the welfare rolls. You believe that as a result of your activity, governmental burdens will, in turn, be lessened.

In as much as the aforementioned activity, as you state, is directed toward a charitable class, you indicate that you cannot or have not established a time frame within which you propose or plan to accomplish the stated goals or objectives.

You state the operation will be ongoing as funding is obtained. While appearing positive about your proposed operation, you express little confidence in securing the necessary funding. The budgets you provided include expenditures primarily for occupancy and fundraising, with no other operating costs.

Section 501(c)(3) of the Code provides for exemption from Federal income tax for organizations organized and operated exclusively for charitable, educational, religious, or scientific purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 501(c)(3)-1(c)(1) of the Regulations states that an organization is operated exclusively for the purposes set out in section 501(c)(3) of the Code only if substantially all of its activities are in furtherance of these purposes.

Revenue Procedure 90-27, published in Cumulative Bulletin 1990-1, on page 514, provides, in part, that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposes that activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded.

Revenue Procedure 95-4, published in Cumulative Bulletin 1995-1, at section 8, provides that the Service may decline to issue a ruling or a determination letter whenever warranted by the facts or circumstances of a particular case.

While you are organized generally for section 501(c)(3) purposes, there are a number of specifically stated purposes which you've provided no description thereof. In addition, the proposed activities which you have discussed, have not been sufficiently described to permit a conclusion that the activities would be conducted in a manner that will meet the requirements of section 501(c)(3). You have not sufficiently described the manner, methods, standards, criteria or means adopted, nor have you adequately explained the nature of the expenditures contemplated.

Moreover, a determination of whether an organization is lessening the burdens of government requires consideration of whether the organization's activities are activities that a governmental unit considers to be its burdens, and whether such activities actually "lessen" such governmental burden.

The fact that an organization is new is not adequate reason not to be able to provide specific detail regarding planned operations.

On the authority of the above Revenue Procedures, it is held that a record of actual operations will be required before a ruling or determination is issued.

After you have operated for a period of time sufficient to permit a conclusion that your operations will clearly fall within the scope of section 501(c)(3) of the Internal Revenue Code and a reconsideration of your exempt status is desired, a new application for exemption may be filed with this office.

In accordance with this determination, you are required to file federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date.

The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

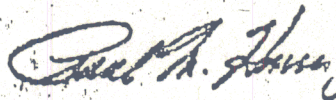
If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7423(b)(2) of the Code provides, in part, that "a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted all administrative remedies available to it within the Internal Revenue Service."

[REDACTED]

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number is shown in in the heading of this letter.

Sincerely,



Paul M. Harrington
District Director
Southeast Key District

Enclosure: Publication 892

cc: State Attorney General [REDACTED]